

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

U.S. SILICA COMPANY AND
BETTER MATERIALS CORPORATION¹

Employer(s)

and

Case 6-UC-420
(formerly 4-UC-368)

TEAMSTERS LOCAL UNION NO. 676
a/w INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO

Petitioner

DECISION AND ORDER

Upon a petition² duly filed under Section 9(b) of the National Labor Relations Act, a hearing was held before Lea Alvo-Sadiky, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Acting Regional Director.³

¹ The name(s) of the Employer(s) appear(s) as corrected at the hearing. See footnote 18.

² The Petition in this matter was duly filed in Region Four of the Board and captioned as Case 4-UC-368. Following the close of the hearing in this matter, the General Counsel, by Order dated June 20, 2000, transferred this case, now captioned as Case 6-UC-420, to Region Six of the Board for, inter alia, the preparation of the Decision in this matter. The Order further provides that upon issuance of the Decision, to the extent that further processing is appropriate to effectuate the issued Decision, the case will automatically transfer back and continue in Region Four as Case 4-UC-368.

³ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th St., NW., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by August 22, 2000.

Upon the entire record⁴ in this case, the Acting Regional Director finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer(s) U.S. Silica Company (herein USS) and Better Materials Corporation (herein BMC) is/are engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. Teamsters Local Union No. 676 a/w International Brotherhood of Teamsters, AFL-CIO (herein called the Petitioner) is a labor organization within the meaning of Section 2(5) of the Act.

The Petitioner seeks to clarify the existing bargaining unit of production and maintenance employees at USS's Millville, New Jersey plant to include the production and maintenance employees at BMC's Newport, New Jersey plant. For at least 35 years, the Petitioner has represented the production and maintenance employees at the Millville plant owned by USS or its predecessors.⁵ As described more fully below, at its Millville plant, USS is engaged in the mining and production of high grade silica. BMC, a sister corporation of USS, is engaged in the production of construction grade sand at its Newport plant, which is immediately adjacent to USS's Millville plant.⁶ In seeking to clarify the existing unit to include the employees at BMC's Newport plant, the Petitioner contends in essence, that there is, in reality, one employer which has expanded its product line and is engaged in an integrated operation at one location with one set of employees.

⁴ Better Materials Corporation and the Petitioner timely filed briefs in this matter which have been duly considered by the undersigned.

⁵ The current collective-bargaining agreement is effective from May 29, 1999, to June 1, 2001. It describes the bargaining unit as ". . . all production and maintenance employees at its Millville plant located north of Dividing Creek, New Jersey. . . ."

⁶ The record indicates that, despite the different city names associated with each plant, the facilities are located at a distance estimated to be from 200 to 2500 feet from each other.

As noted, USS is engaged in the business of producing high quality silica, primarily for use by manufacturers of glass, ceramics, fiberglass and adhesives. USS's corporate office is located in Berkeley Springs, West Virginia. Its President and Chief Operating Officer is Rick Shearer and its Director of Human Resources is Robert Orin. USS has 17 plants located throughout the country, including the Millville, New Jersey plant which is the subject of the instant unit clarification petition. USS as a whole employs about 1000 employees.

USS maintains separate plant management at each of its plants. The Millville plant is under the direction of Plant Manager Ray LaClair. Reporting to LaClair are Materials Manager Eric Lertsing and Production Manager Bob Adams. Human resources functions at the Millville plant are handled by the USS corporate human resources staff. The Millville plant employs about 35 hourly employees. The Millville plant operates year round, and the employees work varying hours around the clock.

As set forth above, at the Millville plant, USS is engaged in the mining and processing of sand for the glass and related industries. The sand is produced in the following manner. Initially, a pit is excavated, ground water seeps into the pit, and the sand is dredged. Thereafter, the sand goes through the following operations: screening to remove large material and debris;⁷ being pumped to a holding pond; another screening where materials are eliminated; sizing; treatment with chemicals, such as caustic soda, sulfuric acid, pine tars and oils to eliminate irons and other impurities; drying on vacuum tables where all the moisture is eliminated; separation into three different grades; storage in a holding tank; a drying process; fine screening; and storage in separate silos.

Recently, USS decided to expand its operations into the construction sand and aggregates business, and to that end, acquired a number of companies engaged in such

⁷ As described more fully in the text below, it is at this point in the process that the coarse material not usable by USS's Millville plant will be transported, via pipeline, to BMC's Newport plant.

operations. As part of this expansion, USS purchased BMC, via a stock transaction, on December 15, 1998, and thereafter, USS operated BMC as a subsidiary of USS.

Subsequently, there was a corporate reorganization, and on September 13, 1999, Better Minerals & Aggregates Company (herein called BMAC) was formed to become the parent holding company for USS and the newly-formed Stone Materials Company. BMC was organized as one of two subsidiaries of Stone Materials Company.

The corporate parent, BMAC, is under the direction of its Chief Executive Officer, Dick Goodell. Reporting to Goodell are Vice President of Administration Walter Pellish, Senior Vice President and Chief Financial Officer Gary Bockrath, and Senior Vice President and General Counsel John Ulizio.⁸ BMAC is responsible for making major operational and policy decisions, but is not involved in the day-to-day operations of its subsidiaries.

BMC maintains its corporate office in Penns Park, Pennsylvania. Its President is Craig Cinalli, its Vice President and Chief Financial Officer is Brian Hessenthaler, and its Personnel Benefits Manager is Sharon Kervic. These officers are responsible for the day-to-day operations of BMC.

BMC operates five plants, which are located in Penns Park, Pennsylvania; Ottsville, Pennsylvania; Berlin, New Jersey; Upper Township, New Jersey and Newport, New Jersey, which is the location at issue herein.⁹ BMC employs a total of 79 hourly and 36 salaried employees. Of BMC's employees, only the truck drivers at its Penns Park plant are represented by a Union, which is a different Teamsters Local than the Petitioner herein.

At its Newport plant, BMC produces a coarse grade material that is used in the construction industry for paving, asphalt and cement. In charge of the Newport plant's day-to-day operations is Plant Manager Terry R. Zeller, Sr., who reports to Cinalli. Employed at the

⁸ These individuals formerly served as officers of USS.

⁹ As described more fully in the text, although they have different names, USS's Millville plant and BMC's Newport plant are immediately adjacent to each other.

plant are seven employees, six of whom are operators and one who is a weigh master.¹⁰ Of these seven employees, two had previously worked at BMC's Berlin plant, four were new hires, and one had previously been employed by USS at its Port Elizabeth, New Jersey plant.¹¹ USS's Port Elizabeth plant is scheduled to close and, in anticipation of that closing, employees at that facility were offered positions at BMC's Newport plant, but only one employee accepted. BMC's Newport plant does not employ any employees who formerly worked for USS's Millville plant.

The human resources functions for BMC's Newport plant are handled by BMC's Personnel Benefits Director. BMC has its own wage and benefit structure separate from USS's Millville plant, with the sole exception that both USS's Millville employees and BMC's Newport employees participate in the same 401(k) plan. BMC's employees are paid by paychecks imprinted with BMC's name, but the payroll function is processed through BMC's corporate offices.

As noted, BMC was acquired by USS in December of 1998, as part of an expansion to provide USS with new product lines, essentially by utilizing waste material from USS's operations. Thereafter, in about early 1999, BMC moved a portable screening machine to a stockpile of waste sand located on USS's Millville property and shortly thereafter, began to reclaim this coarse waste sand. The portable operation includes two front end loaders, which dig out the waste sand, a portable screening machine and a portable weigh station. The portable screen is leased by USS to BMC, and BMC pays USS a fair market value of \$1.10 per ton for the waste sand.

In the fall of 1999, BMC began construction of a permanent plant. This plant had been scheduled to start operating in April 2000, but at the time of the hearing in this matter in June,

¹⁰ BMC anticipates hiring two additional employees.

¹¹ This latter employee is David P. Reed. The record reveals that Reed makes the same wage he had earned while working for USS at its Port Elizabeth, New Jersey plant.

the plant was still not operating. It was anticipated, however, that the plant would be operational in the very near future. The project engineer for the construction of the BMC plant is employed by USS. Once the plant is operational, the portable screening operation will likely cease.

So that it can efficiently utilize the coarse sand not used by USS in its operations, the BMC plant is located immediately adjacent to USS's Millville plant. BMC's plant is being built on 55 acres of land that was deeded to BMC by USS, but there is no evidence of any consideration being paid for it.¹² This property is bounded on three sides by USS property. As previously noted, estimates of the distance between the USS and BMC plants vary from 200-250 feet to 2500 feet.

When the BMC plant is completed, it will receive sand that has been pumped into the plant from a pipeline. USS will dredge the sand, and preliminarily screen it before it is pumped to BMC. This pipeline will initially be 3500 feet in length, but this distance will change as the operation develops. At BMC's plant, the sand will be further screened and sized. It will be stored wet and then shipped to customers. At the completion of this process, waste water and material will be pumped out of the plant. The pump utilized to remove waste water from the plant will be shared with USS and will pump waste water from both plants, with this waste material being stockpiled on property owned by USS.

Once the BMC plant is operational, it will be a seasonal operation with little or no production from the end of December to March 1. It will operate two shifts, from 6 a.m. to 2 p.m. and from 2 p.m. to 10 p.m.¹³ As with its current portable operation, BMC will operate the plant with its own employees. Further, BMC's maintenance and electrical work will be performed by

¹² USS owns thousands of acres, not contiguous, in the vicinity surrounding its Millville plant, on which it conducts its dredging operations by opening successive pits.

¹³ The BMC employees currently work one shift on the portable screening operation.

its operators or by outside contractors.¹⁴ It appears that the work that will be performed in the plant, and that is currently being performed in the portable screening operation, is substantially similar to the production work performed by the employees at USS's Millville plant.

During the past year, USS has borrowed one of BMC's front end loaders, when USS's equipment was broken down. This has happened about once a month during the year. In addition, on one occasion, two USS electricians or mechanics were used by BMC for several hours to assist with a problem BMC contractors were having with the installation of a conveyor belt. BMC paid USS for this work.

The Board has repeatedly followed a restrictive policy with regard to accretions to existing units because employees accreted to an existing unit are not accorded a self-determination election, and the Board seeks to insure the employees' rights to determine their own bargaining representative. Passavant Retirement and Health Center, Inc., 313 NLRB 1216, 1218 (1994); Compact Video Services, Inc., 284 NLRB 117, 119 (1987). Further, the doctrine of accretion will not be applied where the employee group sought to be accreted would constitute a separate appropriate bargaining unit. Towne Ford Sales and Town Imports, 270 NLRB 311 (1984), *affd.* sub nom. Machinists Local 1414 v. NLRB, 759 F.2d 1477 (9th Cir. 1985).¹⁵

The Board has consistently held that a single facility unit geographically separated from other facilities operated by the same employer is presumptively appropriate even though a broader unit might also be appropriate. Passavant Retirement and Health Center, Inc., *supra*; J&L Plate, Inc., 310 NLRB 429 (1993). This presumption may be rebutted by a showing that

¹⁴ The Union steward at USS's Millville plant testified that about a year ago he was told by USS officials that BMC was not planning to hire electricians, but rather planned to use USS electricians. However, BMC Plant Manager Zeller testified that BMC does not plan to use USS electricians. The sole evidence of any use by BMC of USS electricians is described in the text below.

¹⁵ I reject USS's contention that the instant petition was not timely filed as unsupported by the record evidence in this matter. In this regard, the record does not support a finding that the Petitioner executed its most recent agreement with USS, with a unit description limited to employees at USS's Millville facility, with knowledge that a permanent plant with unrepresented employees would be operating immediately adjacent thereto.

the additional employees have little or no separate group identity and thus cannot be considered to be a separate appropriate unit, and that the additional employees share an overwhelming community of interest with the preexisting unit. Safeway Stores, Inc., 256 NLRB 918 (1981). In determining whether the single facility presumption has been rebutted, the Board examines such factors as centralized control over daily operations and labor relations, including the extent of local autonomy; similarity of employee skills, functions, and working conditions; degree of employee interchange; common supervision; distance between locations; and bargaining history. U.S. Tsubaki, Inc., Roller Chain and Automotive Divisions, 331 NLRB No. 47 (June 13, 2000); Compact Video Services, supra. Further, the Board has identified the degree of interchange and separate supervision as particularly important factors in determining whether an accretion is warranted. Towne Ford Sales, supra.

Although BMC's Newport plant is located immediately adjacent to USS's Millville plant on land surrounded on three sides by property owned by USS, BMC's Newport plant, rather than both of the plants, constitutes a "single facility" for purposes of applying the presumption. See Passavant Retirement and Health Center, Inc., supra.¹⁶ As noted, BMC's Newport plant is a separate and distinct production facility with its own workforce. Because BMC's Newport plant is a separate facility, a unit of production and maintenance employees at the Newport plant is presumptively appropriate.

Further, the Petitioner has not rebutted this presumption. Thus, Newport Plant Manager Zeller and BMC President Cinalli control the day-to-day operation of the Newport plant and Zeller directs the Newport plant employees. On the other hand, the daily operations of USS's

¹⁶ This is true irrespective of the status of the enterprises involved herein as a single and/or joint employer under the Act. In Passavant, a unit of nurse aides and other nonprofessional employees employed at the main building of a provider of retirement and health care services was not clarified to include nonprofessional employees at a new facility operated by the employer therein, which was located 300 yards from the main building, since the presumptive appropriateness of a single facility unit of nonprofessional employees at the new facility was not rebutted.

Millville plant are under the direction of Plant Manager LaClair and his management team. Each plant has its own supervision, which does not direct the work of the other plant's employees.

In addition, it is undisputed that there is no regular interchange among employees at the two facilities. The employees at BMC's Newport plant do not work at USS's Millville plant, and the Millville employees do not work at the Newport plant. There has been only once instance in which Millville employees performed work for the Newport plant, and this did not occur as part of the routine production process, but rather arose when there was a problem during the construction of the Newport plant. The absence of employee interchange and the lack of common immediate supervision are "especially important" factors militating against a finding of accretion. Towne Ford Sales, supra.

Although arguably the job functions of the production employees at both facilities are similar, and would require similar skills, it appears that some functions are different in that BMC's Newport employees do not open pits or dredge sand as do USS's Millville employees. Further, it appears that BMC's Newport employees do not treat the sand with chemicals or engage in drying operations. Moreover, with the exception of a common 401(k) plan, the work hours, wages and other benefits are different for the two groups of employees.

Further, while the two plants are immediately adjacent to each other, each plant functions independently of the other and conducts its operations within its own area.¹⁷ The fact that two groups of employees work in close proximity to each other, without more, does not mandate a finding that accretion is appropriate. See Passavant Retirement and Health Center, supra; Towne Ford Sales, supra.

With respect to bargaining history, the employees at USS's Millville plant have long been represented by the Petitioner, while the employees at BMC's Newport plant have never been represented by any labor organization. Thus, there is no common collective bargaining history.

¹⁷ As noted, a loader has been borrowed by the USS Millville plant from the BMC Newport plant on infrequent occasions, and both plants will utilize a common pipeline and a common waste pump.

Although the Newport plant's geographical proximity to, and product integration with, the Millville plant are factors tending to favor accretion, they are outweighed by the factors of autonomy of each plant, separate management hierarchies and separate daily supervision, lack of employee interchange, different terms and conditions of employment, some differences in skills and job duties, and the absence of any common collective bargaining history. Under these circumstances, I find that the Petitioner has not rebutted the presumption that a single facility unit at BMC's Newport plant is appropriate. See U.S. Tsubaki, supra; Passavant Retirement and Health Center, Inc., supra; J & L Plate, supra; and Towne Ford Sales, supra.¹⁸

Based on the above and the record as a whole, I do not find that BMC's Newport employees share an overwhelming community of interest with USS's Millville employees, nor do I find that BMC's Newport employees have little or no separate group identity, as required by the Board's accretion policy. Accordingly, the petition shall be dismissed.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

Dated at Pittsburgh, Pennsylvania, this 8th day of August 2000.

/s/Stanley R. Zawatski

Stanley R. Zawatski

Acting Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD

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¹⁸ In view of the disposition of the case as set forth herein, it is not necessary to decide whether or not USS and BMC are a single and/or joint employer under the Act. Nevertheless, I note that the record makes it clear that while USS and BMC share common ownership, and there is some interrelation of operations, they each have separate management and separate control of labor relations, which counsels against finding them to be a single or joint employer.